

Application No. 09/892,993
Amendment dated: October 5, 2006
Reply to Office Action mailed July 28, 2006

REMARKS

Applicants' attorney is pleased to note that the Office Action mailed July 28, 2006 indicates that the rejection of Claims 26-28 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,171,610 to Vacanti et al. has been withdrawn for the reasons indicated therein. The Examiner has, however, objected to the specification for failing to provide antecedence basis for the claimed subject matter and has rejected Claims 26-29 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The Examiner suggested that the specification be amended to include the elements of original Claim 25 in order to overcome the Examiner's objection to the specification and to overcome the Examiner's 35 U.S.C. 112 rejection. Accordingly, applicants' attorney has amended the specification to add a new paragraph to include the elements of original Claim 25. Because support for this amendment can be found in at least the originally filed claims, the amendment to the specification does not constitute new matter.

New Claims 30-32 have been added to recite additional novel features of the present invention. More particularly, new Claims 30-32 are directed to the lyophilization process used during the production of the polymer phase.

In the foregoing circumstances, Claims 26-29 are believed to be in condition for allowance. Because new Claims 30-32 depend from either independent Claim 26, 27, or 28, they are also believed to be in condition for allowance.

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For the sake of good order, applicants' attorney notes that the submittal of this Amendment should not be construed as an admission that the Vacanti et al. reference constitutes statutory prior art with respect to the present invention. More particularly, applicants' attorney notes that the Vacanti et al. reference did not issue more than one year before the filing date of the present application and, as a result, it does not constitute statutory prior art under 35 U.S.C. 102(b).

In view of the foregoing amendments and remarks, applicants' attorney respectfully requests reexamination and allowance of pending Claims 26-29, and examination and allowance of new Claims 30-32. If such action cannot be taken, the Examiner is cordially invited to place a telephone call to applicants' attorney in order that any outstanding issue may be resolved without the issuance of a further Office Action.

No fees are believed to be due in connection with the submission of this Amendment. If there are any fees due as a result of this Amendment, including extension and petition fees, the Examiner is authorized to charge them to Deposit Account No. 503571.

Respectfully Submitted,

McCARTER & ENGLISH, LLP



By: Sanjiv M. Chokshi
Reg. No. 44,080

McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102
Telephone: (973) 848-5368